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7/26/2019 11:56 am

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GABRIEL SMITH,

Plaintiff,

-against-

ORDER
18-CV-00158(JMA)(ARL)

HEMPSTEAD DISTRICT COURT, et al.,

Defendants.
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AZRACK, District Judge:

On January 8, 2018, incarcerated *pro se* plaintiff Gabriel Smith (“plaintiff”) filed a complaint in this Court but did not remit the filing fee or file an application to proceed *in forma pauperis*. Accordingly, by Notice of Deficiency dated January 12, 2018 (“Notice”), plaintiff was instructed to either remit the filing fee or complete and return the enclosed application to proceed *in forma pauperis* within fourteen (14) days from the date of the Notice. The Notice warned plaintiff that his failure to timely comply may result in the dismissal of his complaint for failure to prosecute. (*See* Notice, Docket Entry No. 5.) On January 22, 2018 and January 31, 2018, plaintiff filed applications to proceed *in forma pauperis*. (*See* Docket Entry Nos. 8-9.) Each application reflects that plaintiff has over \$5,000 in cash or in a checking or savings account. (*Id.*) On April 30, 2018, plaintiff paid the \$400 filing fee. Accordingly, plaintiff’s applications to proceed *in forma pauperis* (Docket Entry Nos. 8-9) are DENIED AS MOOT.

Shortly after the Court received the filing fee, the Court’s *Pro Se* Office sent plaintiff a letter enclosing a civil summons form and instructions for service of the summonses and complaint upon the defendants. Plaintiff was instructed to complete and return the summonses to the Court for issuance and, once issued, they would be returned to plaintiff for service. (*See* Docket Entry No. 11.) On Court 18, 2018, plaintiff returned the unissued summons form to the

Court. (See Docket Entry No. 15 at 5.) Although the summons had not been issued, plaintiff completed the back of the summons to reflect that he personally served the summons on June 5, 2018 at the Hempstead District Court notwithstanding his incarceration at the Green Haven Correctional Facility. On July 23, 2018, plaintiff filed another application to proceed *in forma pauperis* (see Docket Entry No. 17), and, by letter received on November 21, 2018, plaintiff inquired as to the status of his application to proceed *in forma pauperis*. (See Docket Entry No. 19.) Given that plaintiff paid the filing fee back in April 2018, the application to proceed *in forma pauperis* filed in July 2018 is also DENIED AS MOOT.

In light of plaintiff's failure to serve the complaint in accordance with the requirements of Federal Rule of Civil Procedure 4, and the fact that the ninety-day period within which to do so has long expired (see Fed. R. Civ. P. 4(m)), plaintiff is now ORDERED TO SHOW CAUSE, IN WRITING, WITHIN THIRTY (30) DAYS WHY THERE IS GOOD CAUSE FOR PLAINTIFF'S FAILURE TO TIMELY SERVE THE SUMMONSES AND COMPLAINT UPON THE DEFENDANTS. PLAINTIFF IS CAUTIONED THAT A FAILURE TO RESPOND TO THIS ORDER OR A FAILURE TO DEMONSTRATE GOOD CAUSE WILL LEAD TO THE DISMISSAL OF THE COMPLAINT WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(B).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that *in forma pauperis* status for the purpose of an appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of the Court is directed to mail a copy of this Order to the plaintiff at his last known address and to record such service on the docket.

SO ORDERED.

Dated: July 26, 2019
Central Islip, New York

_____/s/ (JMA)_____
Joan M. Azrack
United States District Judge